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Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Summary

The present report is the High Commissioner's sixth periodic report on the human rights situation in the Occupied Palestinian Territory submitted pursuant to Human Rights Council resolutions S-9/1 and S-12/1.

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I. Introduction

1. The present report is the sixth periodic report on the human rights situation in the Occupied Palestinian Territory submitted by the United Nations High Commissioner for Human Rights. It covers the period from 30 November 2012 to 8 November 2013.

2. The information in the present report is based primarily on human rights monitoring carried out by the field presence of the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory (OHCHR-oPt), within the framework of General Assembly resolution 48/141 and Human Rights Council resolutions S-9/1 and S-12/1.

3. In the present report, the High Commissioner highlights issues of concern with regard to each of the main duty bearers in the Occupied Palestinian Territory, namely the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. The issues addressed in the report are far from exhaustive of all human rights concerns in the Occupied Palestinian Territory. The report focuses on areas requiring priority attention by duty bearers and should be read in conjunction with four recent reports by the Secretary-General (A/HRC/24/30, A/68/502, A/68/513 and A/HRC/25/38), which address additional issues not dealt with in the present report.

4. As noted in the High Commissioner's last report on the human rights situation in the Occupied Palestinian Territory (A/HRC/22/35), in March 2012 the Government of Israel suspended its relations with the Human Rights Council and with OHCHR, following the adoption of Council resolution 19/17 establishing a fact-finding mission on Israeli settlements. The Government of Israel revised its position on 29 October 2013, when it participated in the second review of Israel under the universal periodic review. There are also positive signs regarding the re-establishment of the relationship with OHCHR, which remains ready to engage in open and ongoing cooperation with the Government of Israel. With regard to the Government of the State of Palestine,[1] OHCHR notes with appreciation the good cooperation by the ministries of Foreign Affairs, the Interior, Justice and others.

II. Legal framework

5. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the applicable legal framework and the basis for the obligations of the different duty bearers, namely the State of Israel, as the occupying power, the Palestinian Authority and the de facto authorities in Gaza, can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37, paras 5–9). This analysis remains valid.

[1] For the purposes of this report, Government of the State of Palestine and Palestinian Authority are used interchangeably, see A/HRC/22/35, footnote 46.

III. Human rights violations by all duty bearers

A. West Bank, including East Jerusalem

1. Excessive use of force by both Israeli and Palestinian security forces

Israeli security forces

6. The use of force by Israeli security forces, including the Israeli Defence Forces (IDF) and the Border Police, in the West Bank is of serious concern. During the reporting period, this led to the death of 23 people and at least 3,623 people were injured[2] — a significant increase from the previous reporting period (16 November 2011 to 29 November 2012), during which seven Palestinians were killed and 3,036 people injured by Israeli security forces.[3]

7. Many of the casualties were living in refugee camps, which present particular challenges, including in terms of density and, at times, hostility, of the population. Many deaths occurred inside or close to refugee camps, particularly during search and arrest operations. As of 22 October 2013, 12 refugees had been killed since the beginning of the year (compared to none in 2012).[4] Palestinians have also been killed or injured while attempting to cross the wall into Israel or during demonstrations (see para. 60 below).[5]

8. Other incidents occurred close to settlements and have been linked to settlement expansion, settler violence and the lack of protection afforded to Palestinians.[6] Nine Palestinians from Al-Jalazun refugee camp were injured, mostly by live fire by Israeli security forces, but also by rubber-coated metal bullets (RCMBs), in a series of incidents near the settlement of Bet El, in September and October 2013.[7]

9. In some of the incidents documented by OHCHR, the Israeli security forces seemed to have made the decision to use force that was not proportionate to the seriousness of the offence. For example, IDF soldiers responded to stones thrown at their convoy as it passed through a crowded market near Qabatiya on 31 October 2013 with tear gas, sound grenades and live ammunition, which resulted in the death of an unarmed 21-year-old man, Ahmad Tazaz'a.[8]

10. OHCHR documented an incident at Qalandia refugee camp on 26 August 2013, in which three Palestinians were killed and 19 others injured in a search and arrest operation. IDF and Border Police raided the camp in search of a Palestinian man in the early hours of the morning. Reportedly, the Israeli security forces used live ammunition to secure the area while searching the target's house, injuring two Palestinians, including a sanitary worker employed by the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) who was carrying out his duties at least 40 metres away, where he posed no threat.

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[2] Source: OHCHR and Office for the Coordination of Humanitarian Affairs (OCHA): one man died on 28 November 2013 from injuries, including exposure to tear gas, sustained during the reporting period.

[3] A/HRC/22/35, para. 23.

[4] Source: UNRWA.

[5] A/24/30, paras. 37–45; A/68//502, paras. 36–43.

[6] A/HRC/25/38, chaps. V and VI.

[7] Source: OHCHR-oPt.

[8] Ibid.

11. As the camp became aware of the presence of the Israeli security forces, and as IDF reinforcement arrived, major clashes ensued in the camp's main street. The Israeli security forces responded to stone-throwing with tear gas, RCMBs and live ammunition. Two people, Jihad Aslan and Younis Jahjouh, were shot and killed as they threw stones at the soldiers. UNRWA employee, Ruben Zayed, was shot and killed on his way to work by the Israeli security forces as they were leaving the camp. In all of these cases, those killed or injured presented no threat to the lives of the soldiers.[9]

12. Regarding Israeli security forces firing at Palestinians attempting to cross the wall, it often appeared that the objective was to stop people crossing at all costs. OHCHR documented the case of a man who was shot in his ankles as he tried, and failed, to cross the wall on 19 October 2013, near Meitar terminal in Hebron.[10]

13. Israel has an obligation to respect, protect and fulfil the right to life and to act in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).[11] Therefore, in cases where use of force is necessary in the West Bank, including East Jerusalem, Israeli security forces must seek to exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved and to minimize damage or injury. The use of firearms is only permitted in extremely limited circumstances, primarily in self-defence or defence of others against imminent threat of death or serious injury. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.[12]

14. The large number of casualties due to the use of live ammunition by the Israeli security forces raises serious questions as to whether the rules of engagement of the Israeli security forces are in compliance with international law, whether such rules are properly implemented and respected and whether appropriate sanctions are imposed for non-compliance. On repeated occasions, the Israeli security forces have used an excessive level of force that has resulted in death and injuries to Palestinians. Without rigorous regulation and effective accountability, the actions of the Israeli security forces are likely to continue to cause unlawful deaths and injuries.

Palestinian security forces

15. An arrest operation by the Palestinian security forces on 27 August 2013 in Askar refugee camp, involving the Palestinian Preventive Security Service (PPS) and the Palestinian police, was of particular concern. A crowd gathered and began throwing stones at the Palestinian security forces. As the security forces tried to leave, one of their vehicles got stuck. The crowd continued to throw stones and a member of the security forces fired in the air. According to eyewitnesses, very soon after, many members of the security forces, apparently panicking, started firing in the air and at the crowd. Amjad Odeh, who was standing about 30 to 50 metres from the Palestinian security forces, received a shot in the head and was killed, while another man was shot in the leg.[13]

16. The Palestinian security forces also conducted a series of operations in late August to early September 2013 in El Far'a refugee camp, during which a number of Palestinians protesting the entry of the security forces into the camp were injured with live ammunition and tear gas, allegedly directed at the protestors. Some of the persons subsequently detained

[9] Ibid.
[10] See also A/HRC/24/30, paras. 37–45.
[11] International Covenant on Civil and Political Rights (ICCPR), art. 6; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), third preambular paragraph.
[12] Basic Principles, principle 9.
[13] Source: OHCHR-oPt.

were denied various due process rights and allegedly subjected to ill-treatment. While initially deployed to address a law and order problem inside the camp, the Palestinian security forces intervention involved multiple human rights violations and contributed to worsening tensions.[14]

17. The Palestinian Authority and security forces must act in accordance with the Basic Principles, which constitute the basis for the PPS code of conduct, which was drafted with the assistance of OHCHR and approved by the head of the PPS in May 2013. These incidents clearly show the need for the effective implementation of the Basic Principles.

2. Mass demolitions, forcible transfer and revocation of residency rights

18. The Israeli authorities carried out mass demolitions of villages in the West Bank, particularly in East Jerusalem and in Area C, with Bedouin and herding communities being especially vulnerable. The rate of demolitions showed no sign of abating during the reporting period; the Israeli authorities destroyed 576 structures, including 220 residences, in Area C and in East Jerusalem, displacing 964 people, including 483 children. In East Jerusalem alone, the Israeli authorities destroyed 99 structures, including 52 residences, displacing 320 people, including 161 children.[15]

19. Communities in the Jordan Valley, East Jerusalem and the South Hebron Hills were especially exposed to these processes. In August and September 2013, Israeli authorities entirely or almost entirely destroyed the Bedouin and herder communities in Tel al Adassa and Az Za'ayyem in East Jerusalem and Makhul in the northern Jordan Valley.[16]

20. Citing a lack of building permits, the Israeli authorities destroyed all of the structures in the Bedouin community of Tel al Adassa, rendering seven families (39 people) homeless. The authorities ordered the community to evacuate the area permanently or risk high monetary fines and confiscation of livestock. No alternative housing options were offered. The community was thus forced to move to two temporary locations, where they remain vulnerable to further demolitions and repeated displacement due to lack of legal security of tenure and the inability to obtain building permits.

21. These demolitions fall within the broader context of Israel's planning policy, which itself discriminates against Palestinians.[17] Such demolitions breach Israel's international legal obligations to ensure Palestinians' rights to adequate housing, including the prohibition on forced evictions and ensuring security of tenure, and to freedom from arbitrary or unlawful interference with privacy, family and home.[18] The destruction of property and permanent displacement of the communities from their initial locations may amount to violations of the prohibitions on forcible transfer and destruction of property under articles 49 and 53 of the Fourth Geneva Convention, which, as the occupying power, Israel is obliged to respect.

22. At least 3,300 Palestinians in Bedouin and herder communities in the periphery of Jerusalem, Jordan Valley and Massafer Yatta in the South Hebron Hills remain particularly vulnerable to forcible transfer and forced eviction by Israel.[19] These communities continue

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[14] Ibid.

[15] Compared with 677 structures (210 residences) from 30 November 2011 to 29 November 2012, Source: OCHA.

[16] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13662&LangID=E; http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13786&LangID=E.

[17] A/HRC/25/38, chap. IV.

[18] International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11; ICCPR, art. 17.

[19] A/HRC/24/30, paras. 27–29; A/67/372, paras. 36, 37 and 55.

to live in a coercive environment marked by insecurity of tenure, demolitions, settler violence and multiple human rights violations. In addition, the Israeli authorities obstruct humanitarian access to Massafer Yatta communities.

23. The insecure residency status of East Jerusalem Palestinians also remains a concern. A survey commissioned by the United Nations revealed that the equivalent of 70,000 Palestinians have changed their place of residence since September 2000 due to Israeli policies and practices. Most of this displacement was triggered by the potential revocation by the Israeli authorities of the Jerusalem identification documents of Palestinians if they lived outside the municipal boundary of Jerusalem. The majority of the displaced persons were living in the suburbs of Jerusalem and moved back into the city to avoid revocation of their status.[20]

B. Gaza

Blockade of Gaza

24. Israel continued to impose a blockade of Gaza, resulting in violations of international law, including by severely restricting the freedom of movement of Palestinians out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions.[21]

25. Since 2007, when the blockade was tightened, Israel has been allowing movement of Palestinians out of Gaza through Israel, only in "exceptional humanitarian cases".[22]

26. Given the restrictions imposed by Israel, Gazans have relied heavily on the Rafah crossing, the official border crossing between Egypt and Gaza. However, since July 2013, Egyptian authorities have severely limited the opening of the Rafah crossing. The number of Palestinians exiting Gaza through Rafah fell from an average of 40,000 per month during the first half of 2013 to 11,000 a month between July and September 2013.[23]

27. More Palestinians went through the Erez crossing to Israel. In September 2013, nearly 5,000 Palestinians crossed through Erez — 20 per cent more than the monthly average for the first half of 2013.[24] However, this does not mean that the criteria for permission to cross through Erez have been eased. Although the increase is significant, it remains insufficient to meet the needs of the Gazan population. Thousands of people wishing to travel outside of Gaza for work, education, family reunion and health care are not able to do so due to the restrictions in place.[25] Under international law, Israel, as the occupying Power, is responsible for ensuring the right to freedom of movement of Palestinians, including Gaza residents.[26]

28. Following the ceasefire understanding between the de facto authorities in Gaza and Israel in November 2012 (November 2012 agreement), Israel slightly eased restrictions on the import of goods.[27] However, such measures remain insufficient, given the limited

[20] OCHA-commissioned survey covering September 2000 to June 2012 (unpublished); A/68/502, para. 28.

[21] A/68/502, paras 5–16.

[22] Ibid.; http://www.gisha.org/item.asp?lang_id=en&p_id=2130.

[23] See http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf.

[24] See http://www.gisha.org/item.asp?lang_id=en&p_id=2154.

[25] Ibid.; also http://www.gisha.org/item.asp?lang_id=en&p_id=2130.

[26] ICCPR, art. 12; Hague Regulations, art. 43.

[27] A/HRC/24/30, paras. 13–15; also http://www.cogat.idf.il/901-10767-en/Cogat.aspx.

volumes and types of materials allowed through the Kerem Shalom border crossing, the only commercial crossing between Gaza and Israel. Gaza's imports still fall significantly short of the pre-2007 level, and Gaza's exports, representing only 2 per cent of the pre-closure level,[28] continued to be severely restricted, directly impacting livelihoods, economic sustainability and development throughout Gaza.

29. During the reporting period, Egyptian authorities destroyed numerous tunnels used to smuggle goods from Egypt to Gaza.[29] Regardless of questions regarding the legality of using the tunnels, these measures resulted in a shortage of affordable fuel, construction materials, medicine and other goods that normally entered Gaza through the tunnels from Egypt. In response to the situation in Gaza, Israel slightly eased restrictions on the movement of goods. Despite a slight increase in permitted imports, the entry of goods at Kerem Shalom still falls significantly short of meeting the full needs of the Gaza population. The shortage of fuel further disrupted the operation of basic services and exacerbated the already dire situation.[30] To make matters worse, on 1 November 2013, the only power station in Gaza was shut down due to failure by the Palestinian Authority and the de facto authorities in Gaza to agree on fuel prices; since then, the power supply has been restricted to six hours a day.

30. The blockade and related restrictions penalize and impose hardship on the civilian population. These measures contravene article 33 of the Fourth Geneva Convention, which prohibits collective penalties, and should be lifted.[31]

Access restricted areas

31. The November 2012 agreement included the easing of restrictions relating to access restricted areas imposed by Israel on land and at sea. Actual access to land in access restricted areas increased, with some Palestinians being able to access land that had been inaccessible for years. However, the Israeli authorities continued to prohibit access up to at least 300 metres from the fence between Gaza and Israel in most areas.[32] Such restrictions have resulted in the loss of large tracts of arable land.

32. Incidents of use of live ammunition by Israeli Defence Forces (IDF) causing injuries and death to Palestinians — occurring beyond 300 metres of the fence, though less frequently and at shorter distances from the fence than before November 2012 — show that improved access remains limited and precarious. During the reporting period, four Palestinian civilians were killed and 70 injured by the IDF in areas up to and beyond 300 metres of the fence, mostly in northern Gaza.[33] On 30 September, two reportedly unarmed[34]

Between 17 September and 13 October 2013, Israel allowed the entry of limited quantities of construction materials for the private sector for the first time since June 2007: see http://www.israelnationalnews.com/News/News.aspx/172039#.Um-8SHDIZcA; http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf. However, Israel reversed its decision following the discovery of a tunnel between Gaza and Israel: see http://www.gisha.org/item.asp?lang_id=en&p_id=2133.

[28] A/68/502; http://www.pchrgaza.org/files/2013/Closure_August.pdf; OCHA, Gaza Crossings Activities Database.

[29] See http://en.aswatmasriya.com/news/view.aspx?id=ddbc6c63-b774-44c5-90c5-9896780f1327; currently the import of goods from Egypt into Gaza through Rafah is not formally permitted.

[30] See http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2013_10_12_english.pdf.

[31] A/HRC/24/30, paras. 21-23.

[32] A/HRC/24/30; A/68/502.

[33] Source: OPT Protection Cluster.

[34] See http://www.haaretz.com/news/diplomacy-defense/.premium-1.549795.

Palestinians approached the fence in northern Gaza reportedly with the intention of crossing into Israel; one was killed and the other was arrested by the IDF. An ambulance retrieved the body 400 metres from the fence. According to the medical report, numerous bullet entry holes were found in the victim's back and the left side of his upper body. In another case documented by OHCHR, on 18 August, a day labourer — reportedly harvesting okra in eastern Gaza city about 400 metres from the fence — was shot in the leg without any prior warning. There is no indication that these persons constituted an imminent threat to the IDF at the time of the shootings.[35] Based on information available to OHCHR, the use of force was excessive and unnecessary.

33. In November 2012, as part of the agreement, Israel extended the imposed fishing limit from 3 to 6 nautical miles.[36] While Palestinian fishermen have since increased their catch, they are still denied access to the most productive fishing areas, which start at approximately 8 nautical miles from the shore.[37]

34. Fishermen continued to be subjected to arbitrary detention, shot at with live ammunition, and have had their fishing boats and equipment damaged and/or confiscated. During the reporting period, 36 fishermen were detained and 10 injured;[38] 11 fishing boats were confiscated and 16 were damaged; the engines of nine boats, fishing equipment of numerous boats and approximately 500 fishing nets were damaged by the Israeli Navy.[39]

35. The means used by the Israeli Navy to enforce the access restricted areas continue to put fishermen at risk. Incidents of (warning) shots fired towards fishermen — including those within the imposed limits — continue to be reported on an almost daily basis.[40] On 19 May 2013, two fishermen were about 1 nautical mile from the shore in northern Gaza and were reportedly bringing in their catch of fish when two Israeli Navy patrol boats started to shoot into the water around them. Fearing arrest, the fishermen headed towards the shore. Both were arrested, taken to Ashdod in Israel, interrogated and released the next day; their boat and fishing equipment were confiscated.

36. The confiscation and damage of fishing nets, for which there is no discernible security justification, has a particularly negative impact on the fishermen, as nets are very expensive and few can afford to replace them.

37. Restricting Palestinian access to an essential part of their agricultural lands and imposing fishing limits on Palestinian fishermen undermine the livelihood of tens of thousands of Gazans, and violate their human rights, including their rights to work, to freely dispose of their natural wealth and resources, to an adequate standard of living and to food.[41]

Rocket and mortar shell fire from Gaza and Israeli airstrikes

38. Both Israeli and Palestinian armed groups in Gaza have breached the November 2012 ceasefire understanding on a number of occasions, although no major escalation in hostilities has taken place. The United Nations Department for Safety and Security reported 65 rockets and 15 mortar shells fired from Gaza towards Israel, with an additional 19

[35] Source: OHCHR-oPt.

[36] Following rocket fire from Gaza, the fishing zone was reduced to 3 nautical miles between 21 March and 21 May 2013.

[37] Source: FAO and Palestinian Fishermen's Syndicate in Gaza.

[38] Source: OPT Protection Cluster; information gathered suggests that all but one were released.

[39] Source: Union of Agricultural Work Committees.

[40] Ibid.

[41] ICESCR, arts. 1, para. 2, 6 and 11.

rockets and five mortars landing within Gaza and 20 rockets exploding at the launching site during the reporting period. No injuries were reported. The rockets are indiscriminate and a violation of international law.[42] Israel conducted 13 airstrikes, fired at least two tank shells and opened heavy machine-gun fire from a helicopter, causing the death of five persons and injuring two others. It is alleged that six of the victims were members of an armed group. Reportedly, five Israeli soldiers were injured in one of these incidents on 1 November 2013.[43] The IDF also conducted 58 incursions into Gaza.

C. Issues affecting the West Bank, including East Jerusalem, and Gaza

1. Detention, torture and ill-treatment

39. During the reporting period, lack of respect for the rights of persons deprived of their liberty by all three duty bearers across the Occupied Palestinian Territory remained a cause of concern. There were some positive developments, with the Palestinian Preventive Security Service (PPS) allowing unannounced visits by OHCHR to their detention facilities, while Israel made some initial positive responses to United Nations Children's Fund (UNICEF) regarding the detention of minors.

Israel

40. Israel continued to detain large numbers of Palestinians. As of 1 October 2013, 5,046 Palestinians were in Israeli detention: 135 in administrative detention on security grounds, without charge or trial, with well over half of these held for more than six months, some held for more than three years.[44] As previously stressed by the Secretary-General, only in exceptional circumstances may administrative detention be permissible. One of the most problematic areas where Israeli practices fall short of applicable international standards is the use of "secret evidence" as the basis of detention.[45]

41. The Secretary-General has underlined that there are very serious concerns about Israel's treatment of minors in detention, and UNICEF has found widespread, systematic and institutionalized ill-treatment of Palestinian children in the Israeli detention system.[46] The Israeli authorities have since engaged with UNICEF on its recommendations following the publication of its findings in February 2013, including, for example, piloting a test scheme of summons in place of night arrests.

42. However, there is still cause for serious concern. In a survey of 19 cases of alleged ill-treatment in the second quarter of 2013, UNICEF documented violations including physical abuse, painful restraint techniques, blocking of family access and failure to inform detainees of their right to legal counsel.[47]

43. Concerns extend to all detainees, not just children, as underlined by the death of Arafat Jaradat in the custody of the Shin Bet (Israel Security Agency) on 23 February 2013. According to the chief pathologist of the Palestinian Authority, who was present at a preliminary autopsy performed at the National Institute of Forensic Medicine in Israel, his body showed clear signs of torture. Reportedly, the autopsy listed no cause of death,

[42] A/HRC/22/35/Add.1, para. 10.

[43] See http://www.jpost.com/Defense/Palestinians-say-one-man-killed-one-wounded-by-IDF-shelling-in-Gaza-330325.

[44] Source: B'tselem (as of 30 September 2013); Addameer (as of 1 October 2013).

[45] A/67/372, paras. 26 and 27.

[46] A/HRC/24/30, paras 56–57; CRC/C/ISR/CO/2-4, paras. 35–36.

[47] www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf.

although an investigation into the circumstances of Jaradat's death is ongoing.[48] The lack of accountability for such allegations remains a very serious concern.

Palestinian Authority

44. The recent willingness of the PPS to allow OHCHR free and unannounced access to detention facilities is encouraging. It is an important step forward that will hopefully be continued and replicated by all Palestinian detaining authorities.

45. Concerns remain regarding the arbitrary detention and ill-treatment of detainees in the custody of the PPS and the Palestinian General Intelligence Service (GIS), including detainees linked to political opposition groups. While ill-treatment of detainees in GIS custody is not systematic, OHCHR documented a pattern of ill-treatment against those who do not make confessions. In several cases, detainees have alleged been blindfolded, handcuffed, slapped in the face and kicked in the legs. OHCHR also documented five cases during the reporting period where the authorities allegedly held detainees incommunicado and used sleep deprivation and stress positions. In at least one case, the detainee alleged multiple violations that may have amounted to torture.

46. OHCHR was only able to interview a small sample of detainees held by PPS in the latter part of the reporting period, but it documented one case in which a detainee alleged that he was held in stress positions, subjected to sleep and sunlight deprivation and held incommunicado for 14 days. Several detainees reported being held incommunicado in the first two weeks of detention when detainees tend to be most vulnerable. As recorded on many previous occasions, both GIS and PPS continued to detain suspects arbitrarily despite orders to release detainees by the courts, thereby undermining the rule of law.[49]

De facto authorities in Gaza

47. Arbitrary detention, torture and ill-treatment by the de facto authorities remained issues of concern in Gaza (see paras. 62–66 below). OHCHR received numerous reports of persons being arbitrarily detained for periods of up to a few months by the internal security agency across the Gaza Strip. Many detainees were allegedly subjected to *shabeh*[50] and sleep deprivation, with their heads covered with a bag for from a few days up to a few weeks. Detainees were reportedly allowed to remove the bag during prayers but, in most cases, not during interrogations. At meal times, most of the detainees were only allowed to lift the bag above their nose. Several detainees reported exposure to further ill-treatment and, at times, torture, including being hit on the soles of their feet, having their head hit against a wall and being slapped in the face or beaten with sticks, rubber tubes or lashes on other parts of their body.

48. In August 2013, two men were summoned to the internal security agency in northern Gaza and allegedly detained, interrogated and tortured because one of the men was involved in a public disagreement over a political issue. Both were blindfolded after arriving at the agency and accused of inciting people against the de facto authorities. One of the men said he was slapped in the face, kicked and beaten with sticks on his legs and on

[48] See www.haaretz.com/news/diplomacy-defense/autopsy-shows-palestinian-prisoner-died-from-torture-says-pa-chief-pathologist-1.505545; for further information see Public Committee against Torture in Israel (PCATI).

[49] A/HRC/19/20, para 42.

[50] *Shabeh* entails holding a stress position for extended periods of time.

the soles of his feet. The other was reportedly beaten with sticks and a lash, and made to stand on one leg with arms lifted, while being beaten on the leg he was standing on.[51]

49. Detainees were held longest at the interrogation centre of the security agency in Gaza City and were allegedly prevented from meeting with their families during the interrogation phase which, in some cases, lasted several months. If at all, detainees were reportedly only able to meet their lawyers after the interrogations were completed and then only in the presence of security agency officials. This was the case of a 27-year-old man who was arrested by the internal security agency in April 2013 for collaborating with Israel. He was subjected to *shabeh* and sleep deprivation, and was only allowed to see his family after a month of detention, with no access to his lawyer during that period.[52]

2. Accountability

Israel

50. According to an Israeli NGO, in 2012, Israeli Military Police Criminal Investigation Division opened 103 investigations into allegations of criminal offences by members of the IDF against Palestinians and their property in the Occupied Palestinian Territory. This represented response to approximately 40 per cent of allegations received, compared to 62 per cent between 2000 and 2011.[53]

51. Available information indicates that not a single criminal investigation was opened into allegations of violations of international humanitarian law in Gaza by the IDF during the escalation of tension in November 2012.[54] A Palestinian human rights NGO appealed 13 decisions not to open investigations; each appeal was either rejected or pending as of 8 November 2013.[55]

52. In the West Bank, criminal investigations were immediately opened in 12 of the 20 Palestinian deaths in which the IDF were implicated during the reporting period, including some of those documented above.[56] It appears that some cases were not opened because of claims that firearms were used against the IDF.

53. Many human rights violations committed by the IDF during law enforcement operations were not investigated, both in the West Bank and in Gaza. A revised policy adopted by the Military Advocate General in 2011 to automatically open investigations into certain cases applies only where a Palestinian is killed outside of "an activity with clear elements of combat," and excludes Gaza.[57] For cases outside the scope of the policy, a criminal investigation is not normally opened unless concerns are raised during an operational debriefing.[58]

54. Even when opened, criminal investigations are beset with delays and other problems and rarely result in indictments. According to information collected by human rights organizations, only six IDF soldiers have been convicted of offences related to the deaths of Palestinians since September 2000, although over 179 such investigations were opened

[51] Source: OHCHR-oPt.

[52] Ibid.

[53] See http://www.yesh-din.org/userfiles/file/datasheets/Law%20Enforcement%20upon%20-%202012.pdf.

[54] Also A/HRC/22/35/Add.1; A/HRC/24/30.

[55] Source: Palestinian Centre for Human Rights (PCHR).

[56] Source: B'tselem.

[57] See http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx; A/66/356, para. 18.

[58] See A/HRC/12/48, para. 121 for examples of shortcomings of operational debriefings.

between 2003 and 2012.[59] There was only one indictment of a soldier in relation to the killing or serious injury of a Palestinian during this reporting period. In this case, the soldier was convicted of negligent homicide of a Palestinian crossing the wall, and received a seven-month prison sentence.[60] As previously mentioned by the Secretary-General, the Turkel Commission made a number of recommendations regarding accountability for violations of international law.[61] In 2013, there were reports that the Ministry of Justice was forming a commission to study the recommendations.[62] However, by the end of the reporting period there had been no formal public announcement regarding any steps taken in that regard.

55. The lack of effectiveness of investigations into allegations of torture and ill-treatment by the Israeli security forces continues to be a cause of serious concern. Impunity for Israeli security officers is particularly prevalent, with not a single investigation into the 776 complaints made since 2001.[63] The effectiveness of the investigative system appears to be undermined, in part, by the lack of independence of the investigators.[64] Although in 2013, Israel announced the establishment of a new independent investigative mechanism for such complaints, as of November 2013, it was not yet operational. With regard to such allegations against the IDF, judicial responses, such as the conviction in November 2013 of two soldiers for beating a Palestinian in their custody, remain rare.[65]

56. Palestinians continue to face a barrage of legal and procedural barriers when seeking to access remedies for violations by the IDF.[66] Under the presiding tort law of 1952, the State is not civilly liable for acts by the IDF which are "performed in the course of a wartime action".[67] In the reporting period alone, over 30 civil cases were dismissed at the preliminary stages on the basis of this broad exemption.[68] One exceptional case was Israel's agreement to pay US$50,000 in compensation to the families of three boys killed in northern Gaza in 2001.[69]

Palestinian Authority

57. The lack of effective and transparent investigation into cases of alleged unlawful killing, torture and ill-treatment involving the Palestinian security forces is of serious concern. Of the five investigative committees established in 2012 to look into various allegations, the report of only one committee was published, and it did not provide details of any action taken against perpetrators.[70] There is also a grave failure to properly investigate allegations of torture and ill-treatment. The Independent Commission for Human Rights (ICHR) had filed 124 such complaints in respect of the West Bank as of 31

[59] See http://www.yesh-din.org/postview.asp?postid=263.

[60] Source: Yesh Din and B'tselem; the sentence was reported as nine months in A/HRC/24/30, para. 47.

[61] A/68/502, para. 29.

[62] See http://www.jpost.com/Diplomacy-and-Politics/Is-govt-following-Turkels-ideas-on-probing-war-crimes-323038.

[63] As of July 2013, according to PCATI.

[64] See http://www.stoptorture.org.il/files/PCATI_eng_web.pdf.

[65] See http://www.timesofisrael.com/soldiers-heading-to-prison-for-abusing-palestinian/.

[66] See http://adalah.org/Public/files/English/Publications/Articles/2013/Obstacles-Palestinians-Court-Fatmeh-ElAjou-05-13.pdf.

[67] Civil Wrongs (Liability of the State) Law 5712-1952, art. 5.

[68] Source: PCHR.

[69] See http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9861:12-years-following-their-deaths-pchr-succeeds-in-ensuring-remedy-for-3-children-of-lubbad-banat-and-al-madhoun-families&catid=145:in-focus.

[70] A/68/502, paras. 44–47.

October 2013, but consistently received outright denials from the authorities without initiation of a thorough and effective investigation.

De facto authorities in Gaza and armed groups

58. According to available information, no measures have been taken by the de facto authorities in Gaza to investigate credible allegations of violations of international humanitarian law by the said authorities or armed groups in Gaza, including the direct targeting of civilians and the indiscriminate firing of rockets towards Israel.[71]

59. Media reports, citing the spokesperson of the Interior Ministry of the de facto authorities, claim that following an investigation of the summary execution of alleged collaborators during the November 2012 escalation of tension,[72] measures had been taken against four prison officials "who had failed to do their jobs".[73] Besides lacking transparency, there is insufficient information to determine if any investigation met international standards. It appears that the armed men directly responsible for the killings continue to enjoy impunity.

60. In July 2013, at least 10 people were abducted and eight severely beaten by armed masked men in Gaza. The victims reported that the abductors presented themselves as members of Al-Qassam Brigades, the military wing of Hamas, and accused them of being involved in the Tramadol[74] trade. Officials of the de facto authorities were allegedly involved in providing the armed men with information about the location of the victims. During their abduction, the men — who were covered with bruises and at least eight of whom had broken legs — were allegedly blindfolded, handcuffed and severely beaten on numerous occasions, including with iron rods, prior to their release. At the time of writing this report, there were no indications that any investigations into these incidents were being conducted by the de facto authorities in Gaza.

3. Freedom of expression and peaceful assembly

Israel

61. During the reporting period, there continued to be serious concerns about the level of force used by Israeli security forces at demonstrations in the West Bank. For example, on 22 February 2013, in Abud village, Sameeh Asfour was fatally injured by an RCMB fired at demonstrators assembled to express solidarity with Palestinians in Israeli prisons.[75] Another reported incident took place on 19 July 2013 at a demonstration against settlement expansion and the seizure of a well by settlers. On that occasion a woman working for an Israeli NGO monitoring the demonstration was shot in the leg with an RCMB.[76]

Palestinian Authority

62. In the West Bank, including East Jerusalem, OHCHR continued to receive reports that journalists faced arrest and questioning for work deemed to be critical of the authorities. OHCHR documented cases of Palestinians arrested for distributing political leaflets, as reportedly was the case in the incidents at Askar and El Far'a refugee camps.

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[71] Also A/HRC/22/35/Add.1; A/HRC/24/30.

[72] A/HRC/22/35/Add.1, paras. 40–45.

[73] See http://wap.npr.org/news/World/186975387?start=10.

[74] Tramadol is a painkiller that is sold illegally without a prescription; see http://tinyurl.com/po9oukw.

[75] See A/68/502, paras. 37 and 40; A/66/356, paras. 20–24; A/24/30, para. 45.

[76] http://www.btselem.org/press_releases/20130730_stop_using_rubber_coated_bullets_against_demonstrators.

While other legitimate charges may have been brought against the suspects in those cases, the fact that the authorities considered the distribution of critical political pamphlets a criminal issue is of concern.

De facto authorities in Gaza

63. The de facto authorities in Gaza continued to restrict the enjoyment of the rights to freedoms of expression and opinion and of peaceful assembly. Members of political parties, journalists, social media activists and academics were arbitrarily detained. They reported being ill-treated and, in some cases, tortured because of opinions expressed through different media platforms, including social media, and their involvement in activities considered to be political and against the de facto authorities or their policies.[77]

64. In August 2013, at least 20 Fatah members were arbitrarily detained and many reportedly ill-treated. The Fatah members were alleged to have distributed money to families of Fatah supporters who had been killed and injured during the 2007 intra-Palestinian clashes. Some were detained for weeks without charges and allegedly subjected to sleep deprivation, *shabeh*, beatings and extensive interrogation. Most stated they were obliged to sign documents stating their commitment to cease engaging in any political or other activities directed against the de facto authorities.[78]

65. A number of individuals were detained in relation to Tamarod.[79] In one case, a 40-year-old employee of the Palestinian Authority was detained for approximately 18 hours by the internal security agency in Rafah in September 2013. He was interrogated about his involvement with Tamarod and reportedly subjected to *shabeh* and other ill-treatment and repeatedly told to confess that he had received documents related to Tamarod. He was released, reportedly after the security agency discovered that its intelligence was wrong. In another case, a Fatah activist was arrested by the security agency on two occasions for his alleged pro-Tamarod campaign on Facebook. He was reportedly tortured during detention, threatened with further detention if he opened a new Facebook account, and forced to sign a paper stating that he would not engage in political activities.[80]

66. The de facto authorities also dispersed a number of peaceful demonstrations using excessive or unnecessary force. On 5 May 2013, the police of the de facto authorities forcibly dispersed a peaceful assembly organized by the Popular Front for the Liberation of Palestine protesting against Israel's attacks on Syria. Demonstrators and journalists were beaten with sticks, and some were detained for a few hours. The photography equipment of some journalists was confiscated or damaged.[81] Shortly after, officials of the de facto authorities issued a statement denouncing the use of force against the journalists and apologizing for the "harsh treatment" they had undergone. However, the authorities maintained that the protest was unlawful, arguing that legal procedures had not been followed.[82] The spokesperson of the Ministry of the Interior of the de facto authorities requested that a commission of inquiry be established to investigate the incident. Since then, there has been no indication that this commission has been formed.

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77 Source: OHCHR-oPt.

78 Ibid.

79 *Tamarod* means rebellion. In Gaza, there appear to be a few Tamarod groups that gather followers through social media, independently from any political party. Tamarod is also the name of a protest movement in Egypt.

80 Source: OHCHR-oPt.

81 Ibid.

82 See http://tinyurl.com/o4hw3tn.

67. Another serious issue of concern was the closure of two media offices. On 25 July 2013, the Prosecutor General of the de facto authorities in Gaza issued an order to temporarily close Ma'an News Agency and Al-Arabiya News Channel, accusing them of distributing false news regarding Hamas and its role in relation to political developments in Egypt. Ma'an News Agency reported that the de facto authorities provided it with a list of preconditions to be met in order to reopen the news agency, which were inconsistent with press freedom. Both offices were reopened in mid-November, without preconditions.

4. Death penalty and the right to life

Palestinian Authority

68. On 4 May 2013, the Permanent Military Court in Jenin sentenced a security officer to death by firing squad for collaborating with Israel. In line with recent practice, the Palestinian President did not ratify this or any other death sentences. Pursuant to the President's instruction, Palestinian military courts have retried a number of death-row prisoners and sentenced them instead to terms of imprisonment.

De facto authorities in Gaza

69. Since 2008, courts of the de facto authorities in Gaza have issued 60 and upheld eight death sentences previously issued by the courts of the Palestinian Authority in Gaza.[83] The de facto authorities executed three persons during the reporting period, bringing to a total of 17, the number of executions since its takeover of Gaza.

70. Palestinian Basic Law rightly restricts the jurisdiction of military courts to "military affairs" (art. 101 (2)). In Gaza, under existing laws,[84] the de facto authorities can impose the death penalty for a broad range of crimes, and civilians continue to be tried by military courts[85] despite the recommendations of the United Nations Human Rights Committee.[86] On a number of occasions, the United Nations High Commissioner for Human Rights has urged the de facto authorities to halt executions, and raised concerns about the process by which death sentences were imposed in Gaza.[87] OHCHR consistently documented allegations of denial of the right to receive legal assistance, the use of ill-treatment and torture during interrogations and violations of the right to a fair trial by both civilian and military courts of persons later sentenced to death.

71. In addition, persons sentenced to death are being denied the right to seek pardon or commutation of their sentences. None of the 17 executions in Gaza were ratified by the President, as required under Palestinian law. Moreover, trials failed to meet fair trial standards, which is of heightened concern where the death penalty may be applied.[88]

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[83] Source: PCHR, ICHR, B'tselem. No official figures on the number of persons on death row are available.

[84] Mandatory Criminal Code Ordinance No. 74 of 1936, amended by Egypt's Military Governor Order No. 555 of 2 April 1957 and the Revolutionary Penal Code of 1979.

[85] As of 28 October 2013, 44 death sentences were issued by Military Courts, out of a total of 60 in Gaza.

[86] Human Rights Committee general comment No. 32 (2007) on Article 14, para. 22; also CCPR/CO/70/PER, para. 12; Basic Principles on the Independence of the Judiciary (1985), principle 5.

[87] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13628&LangID=E.

[88] Ibid.

5. Violence against women

72. Women in the Occupied Palestinian Territory face multiple layers of violence and discrimination. The analysis made by the Special Rapporteur on violence against women in 2005 remains valid. She found that the combination of decades of Israeli occupation, the use of force against Palestinians by Israel, the different forms of resistance used by Palestinians against such use of force and the patriarchy prevailing in Palestinian society expose women to a continuum of violence in all spheres of life.[89]

73. Palestinian NGOs report that violence against women continues to be widespread[90] and so-called "honour killings"[91] remain of concern. Family honour plays a fundamental role in Palestinian society. Although there are no reliable statistics on "honour killings,"[92] in 2012,[93] ICHR documented five such cases across the Occupied Palestinian Territory.[94] However, there appears to be underreporting of cases; 13 additional cases of murder of women were documented as occurring under "mysterious" circumstances, which indicates that the number of "honour killings" may be higher.[95]

74. In 2011, the Palestinian President abolished article 340 of the 1960 Jordanian Penal Code,[96] which had been in force in the West Bank, and which allowed effective impunity for men who kill or injure their wives or female relatives (*maharim*)[97] whom they consider to be involved in adultery. However, this measure has not been effective as provisions establishing mitigating circumstances remain in force, in particular article 98 of the Penal Code,[98] which provides for reduced penalties for a person who commits a crime in a state of great anger resulting from a wrongful and dangerous act on the part of the victim.[99] An NGO study of cases of "honour killings" between 2005 and 2010 showed that the evocation of such mitigating circumstances had dramatically reduced penalties.[100] In eight out of 10 cases, the perpetrators were charged with premeditated murder, which carries life imprisonment,[101] however, in most of the cases, due to a combination of mitigating circumstances and the victim's family's decision to "drop" the victim's personal rights,[102]

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89 A/HRC/13/54, para. 54; E/CN.4/2005/72/Add. 4.

90 Women's Studies Centre and Women's Affairs Center, Palestinian women in the cycle of violence, December 2012.

91 While some Palestinian NGOs prefer the term "femicide", this report follows the terminology used by the Committee on the Elimination of Discrimination against Women.

92 A/HRC/13/54, para 56; also http://www.pwrdc.ps/site_files/Fact%20Sheet%20E%20-%20Womens.pdf.

93 The Women's Centre for Legal Aid and Counselling (WCLAC) recorded 25 cases of gender-based killings between January and October 2013.

94 ICHR, Eighteenth Annual Report, 2012, p. 68.

95 Reportedly, in one case the medical report falsely stated that the cause of the death was natural; see ICHR, Eighteenth Annual Report, 2012, p. 275.

96 Gaza applies the Mandatory Criminal Code Ordinance No. 74 of 1936.

97 *Maharim* means relatives whom one cannot marry. See also OHCHR, "The consistency of applicable Palestinian legislation with international human rights law", 2013, p. 9.

98 Also articles 97 and 99.

99 This provision has been used repeatedly to reduce penalties for perpetrators of "honour killings"; see also Lynn Welchman and Sara Hossain, eds., *'Honour': Crimes, Paradigms and Violence Against Women*, (London, U.K., Zed Books, 2005), pp. 174–176.

100 WCLAC, "Court judgments issued against perpetrators of murders of women", 2011 (in Arabic).

101 Article 328 of the 1960 Jordanian Penal Code establishes the death penalty for premeditated murder. However, ordinarily, this is replaced by life imprisonment.

102 The Jordanian Penal Code provides for the protection of two types of rights: personal and societal; a victim, in this case, the victim's family, can renounce the criminal action related to personal rights. However, victims cannot renounce criminal actions related to societal rights, since they fall outside of the personal sphere.

penalties did not exceed five years. Furthermore, in most of the cases, the perpetrators were close family members, including brothers, fathers and mothers. The study also revealed that only 10 judgments were handed down in such cases between 2005 and 2010.[103]

IV. Recommendations

A. Recommendations to the Government of Israel

75. **Lift the blockade of Gaza to remedy the ongoing punitive measures against the civilian population, and ensure that any measures restricting the freedom of movement of civilians and the transfer of goods from, into and within Gaza are consistent with international law.**

76. **Ensure that the use of force by its security forces, including in the access restricted areas, in situations other than hostilities is in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by carrying out an independent review and any necessary revisions of rules of engagement or regulations on opening fire to ensure their consistency with international law.**

77. **Carry out prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing or injury, torture and ill-treatment and ensure that the investigations are subject to public scrutiny and allow for meaningful victim participation. Prosecute individuals responsible for violations and provide victims with an effective remedy. As an initial step to reforming the investigative system, implement the recommendations contained in the second report of the Turkel Commission.**

78. **Immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, including Massafer Yatta. Permit and facilitate the return of those communities already subjected to forcible transfer or eviction to the their original dwellings and ensure adequate housing and legal security of tenure.**

79. **Charge or release any detainees held in administrative detention and bring to an end the administrative detention regime.**

80. **Implement the recommendations made by UNICEF and the Committee on the Rights of the Child[104] regarding the treatment of Palestinian children in detention.**

B. Recommendations to the Government of the State of Palestine

81. **Ensure that the use of force and treatment of detainees by all security forces is in compliance with international human rights law and principles, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that the new PPS Code of Conduct is applied in practice. Conduct regular training on international human rights law, the Basic Principles and the PPS Code of Conduct for security officers, and investigate and review operations to ensure regular compliance.**

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[103] WCLAC, "Court judgment", 2011 (see footnote 113 above).

[104] UNICEF, *Children in Israeli Military Detention: Observations and Recommendations*, February 2013; CRC/C/ISR/CO/2-4, especially paras. 35 and 36.

82. Conduct prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing, injury, torture and ill-treatment by security forces, including, for example, the killing of Amjad Odeh at Askar refugee camp. Ensure that such investigations are transparent, that the results are made public and that those responsible are brought to justice in fair trials.

83. Publish in full the reports of investigative committees.[105]

84. Ensure that court decisions ordering the release of detainees are respected and promptly enforced and take appropriate measures against those institutions and individuals not respecting such orders.

85. Ensure that journalists and political activists are able to carry out their work without hindrance, in particular, ensure that security services refrain from arresting or harassing people for distributing or publishing materials that are critical of the Palestinian Authority.

86. Officially declare a formal moratorium on the death penalty, pending abolition.

87. Adopt necessary measures to effectively investigate, prosecute and bring to justice perpetrators of all acts involving violence against women and, in particular, amend the criminal legislation in order to prevent impunity and reduced penalties for so-called "honour crimes".

C. Recommendations to the de facto authorities and Palestinian armed groups in Gaza

88. The de facto authorities in Gaza must respect international humanitarian law, especially in relation to the principle of distinction, and ensure accountability for violations.

89. Palestinian armed groups in Gaza must respect international humanitarian law.

90. The de facto authorities must refrain from unlawful restrictions on free speech and peaceful assembly, including closing entire media outlets, and must allow journalists, political activists, social media activists, academics and others to carry out their work and exercise their public freedoms without hindrance, including freedom from arbitrary arrest, torture and ill-treatment. The authorities must investigate any violations against such persons.

91. The de facto authorities must take all necessary measures to ensure that detentions are in line with international human rights norms and standards, and must ensure the immediate end of the use of torture and ill-treatment by its security forces. They must promptly, thoroughly, effectively, independently, impartially and transparently investigate all allegations of torture and ill-treatment, as well as impose appropriate sanctions against those responsible based on fair trials, and provide victims with adequate, effective and prompt reparations for the harm suffered.

92. The de facto authorities in Gaza should impose an immediate moratorium on executions, and cease the use of military tribunals to try civilians.

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[105] See para. 56 above.